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Letter dated 26 December 2001 from the Secretary-General to the President of the Security Council

As you will recall, in a letter dated 12 July 2001 to the President of the Security Council, I informed members of the Council of the state of the appeal for voluntary contributions to the Special Court for Sierra Leone, in particular the revised budget estimates reflecting a scaled-down operation of the Court. On the basis of indications received of contributions in funds for the first year of operation of the Court, I then made a determination that, if obtained in the amount pledged, such contributions would be sufficient to commence the establishment and operation of the Court. As of 30 November 2001, the Secretariat has received contributions in the amount of US$ 14.8 million for the first year — a shortfall of $1.4 million — and pledges in the amounts of $13.0 million and $7.4 million for the two subsequent years — a shortfall of approximately $19.6 million.

The Council and the Secretariat have an understanding that the implementation of the Agreement on the Establishment of the Special Court for Sierra Leone would commence only after it could be ascertained that sufficient contributions were in hand to finance the establishment of the Court and 12 months of its operation, and that pledges had been received equal to the anticipated expenses of the following 24 months. While the first year of operation of the Court is virtually funded, the shortfall in the pledges for the second and third years of operation remains quite high.

I am persuaded, however, of the political will of States and their commitment to the success and continued viability of the Court. I have therefore taken the decision to authorize the commencement of the operation of the Court, beginning with the dispatch of a planning mission to Freetown. The purpose of the mission will be to discuss with the Government of Sierra Leone the practical arrangements for the establishment and operation of the Court, including premises, the provision of local personnel and services, and the launching of the investigative and prosecutorial process. The mission, scheduled from 7 to 18 January 2002, will be led by the Office of Legal Affairs of the Secretariat, and will be composed, in addition, of experts in all aspects of the operation of the Court and representatives of the members of the Management Committee.

The last pending issue between the Secretariat and the Government of Sierra Leone — the question of the temporal jurisdiction of the Court — has now been resolved. By a letter dated 7 December 2001, the Government of Sierra Leone has indicated that while maintaining its position of principle, it will be willing to

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conclude the Agreement with the temporal jurisdiction set as originally agreed as of 30 November 1996. It is expected that the Agreement with the Government of Sierra Leone will be signed at the conclusion of the mission, thus establishing the legal framework for the establishment and operation of the Court.

Having authorized the commencement of the operation of the Special Court for Sierra Leone, I wish nevertheless to reiterate the concerns expressed in my previous communications to the Council regarding the difficulties inherent in securing funds on the basis of voluntary contributions for an operation which engages the services of a great number of Sierra Leonean and international personnel. While trusting that members of the Council who called for the establishment of the Court would ensure that it successfully accomplishes its operation, I reserve the right to revert to at any time in the course of the operation of the Court, and request the Council to consider, the financing of any residual shortfall through assessed contributions or an alternate means of financing. Members of the Council will note that, once the Court is established, the United Nations, as a signatory to the Agreement on its establishment, will assume certain obligations, inter alia, vis-à-vis persons detained under the Court's authority or in regard to contractual relationship. Furthermore, it should be borne in mind that a shift to assessed contributions would automatically require the application of the administrative regime of the United Nations, including the full involvement of the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee of the General Assembly.

Upon the return of the planning mission to Headquarters, I will report to members of the Council on the recommendations on the organization of the start-up phase and all aspects of the establishment and operation of the Court.

(*Signed*) Kofi A. **Annan**